

Remarks/Arguments

Applicants have received and carefully reviewed the Final Office Action of the Examiner mailed June 29, 2007. Currently, claims 23-36 remain pending. Claims 23-36 have been rejected. In this amendment, claims 23 and 28 have been amended. Favorable consideration of the following remarks is respectfully requested.

Claim Rejection – 35 USC § 103(a)

In paragraph 3 of the Final Office Action, claims 23-26 and 28-35 were rejected under 35 U.S.C. 103(a) as being unpatentable over Heath (U.S. Patent No. 5,725,570) in view of Bellouard et al. (U.S. Patent No. 6,669,794). After careful review, Applicant must respectfully traverse the rejection.

Turning to claim 23, which recites:

23. (currently amended) A medical device, comprising:
a solid linear elastic member having at least one localized area of flexibility formed by selectively heating an intermediate portion of the member to a temperature sufficient to induce superelasticity in the member.

Without conceding the correctness of the rejection, Applicant has amended claim 23 to recite, “a solid linear elastic member”. Nowhere does Heath appear to teach or suggest a solid linear elastic member.

Instead, Heath appears to teach a composite tubular prosthesis device including an outer member and a core member. (See abstract). The outer member may be selected from superelastic alloys and precursors of superelastic (i.e. linear elastic) alloys. (See, for example, column 3, lines 10-13 and column 4, lines 63-65). The core member is secured within the outer member to enhance the radiopacity of the device. (See column 4, lines 65-66). As such, the core member does not appear to be linear elastic. Thus, it can be clearly seen that nowhere does Heath appear to teach or suggest a “solid linear elastic member”, as recited in amended claim 23. Furthermore, nowhere does Bellouard et al. appear to remedy the shortcomings of Heath. Therefore, for at least this reason, claim 23 is believed to be patentable over Heath in view of Bellouard et al.

Additionally, for similar reasons, as well as others, claims 24-26, which depend from claim 23, are believed to be patentable over Heath in view of Bellouard et al.

Turning to claim 28, which recites:

28. (currently amended) A medical device comprising:
a solid linear elastic member having a localized superelastic region;
wherein the localized superelastic region is formed by heating an
intermediate portion of the solid linear elastic member to a temperature
sufficient to form the localized superelastic region within the linear elastic
member.

Without conceding the correctness of the rejection, Applicant has amended claim 28 to recite, “a solid linear elastic member”. As discussed previously, nowhere does Heath appear to teach or suggest a solid linear elastic member. Therefore, for at least this reason, claim 28 is believed to be patentable over Heath in view of Bellouard et al.

Additionally, for similar reasons, as well as others, claims 29-35, which depend from claim 28, are believed to be patentable over Heath in view of Bellouard et al.

In paragraph 4 of the Final Office Action, claims 23, 25, 27-32, 34 and 36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Muni et al. (U.S. Patent No. 6,375,629) in view of Bellouard et al. (U.S. Patent No. 6,669,794). After careful review, Applicant must respectfully traverse the rejection.

Turning to claim 23, which recites:

23. (currently amended) A medical device, comprising:
a solid linear elastic member having at least one localized area of
flexibility formed by selectively heating an intermediate portion of the
member to a temperature sufficient to induce superelasticity in the
member.

Applicant respectfully asserts that claim 23 is non-obvious in view of Muni et al. and Bellouard et al. Muni et al. appears to disclose a core wire with a shapeable tip for use in a medical catheter. A superelastic core wire is subject to additional processing to remove its superelasticity thereby allowing the material to be shapeable to aid in advancing the core wire through a blood vessel or other body cavity. (See abstract). The core wire results in a substantially flexible proximal section and less flexible and greater shapeability at the distal tip. The proximal section may be superelastic while the distal tip is substantially linear elastic. (See column 7, lines 45-55). In essence, Muni et al. appears to teach additional processing of the core wire to remove superelasticity.

Bellouard et al. appears to teach a method of imparting superelasticity in the

member. In the Final Office Action, the Examiner states Bellouard et al. teaches “to subject Ni-Ti alloys for use as medical devices to localized heat treatments to obtain superelasticity in a desire portion of the device”. (See bottom of page 2 of the Final Office Action). From this, it appears that the Examiner acknowledges that Bellouard et al. teaches to impart superelasticity in the member. As such, Applicant respectfully asserts that the processing of Bellouard et al. would not be combined with the device of Muni et al. because a person of skill in the art would not remove the superelasticity in the distal tip to make it substantially linear elastic and then, according to the teachings of Bellouard et al., impart superelasticity in the region that it was just removed from.

Furthermore, the combination of Muni et al. and Bellouard et al. do not appear to teach all the limitations of claim 23, if combined. As discussed previously, the only portion of the device of Muni et al. that is linear elastic is the distal tip. Then, if the device was processed according to Bellouard et al. to impart superelasticity, the only portion of the device that could be processed to impart superelasticity is the distal tip, the only linear elastic portion. As such, the combination would not teach a linear elastic member having at least one localized area of flexibility formed by selectively heating an intermediate portion of the member to a temperature sufficient to induce superelasticity in the member. Therefore, for at least these reasons, claim 23 is believed to be patentable over Muni et al. in view of Bellouard et al.

Additionally, for similar reasons, as well as others, claims 25 and 27, which depend from claim 23, are believed to be patentable over Muni et al. in view of Bellouard et al.

Turning to claim 28, which recites:

28. (currently amended) A medical device comprising:
a solid linear elastic member having a localized superelastic region;
wherein the localized superelastic region is formed by heating an
intermediate portion of the solid linear elastic member to a temperature
sufficient to form the localized superelastic region within the linear elastic
member.

For similar reasons discussed previously, claim 28 is believed to be patentable over Muni et al. in view of Bellouard et al. Additionally, for similar reasons, as well as others, claims 29-32, 34, and 36, which depend from claim 28, are believed to be

patentable over Muni et al. in view of Bellouard et al.

Conclusion

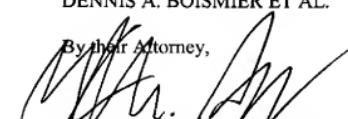
In view of the foregoing, all pending claims are believed to be in a condition for allowance. Reexamination and reconsideration are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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By their Attorney,

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